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INTERVENTION

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September 27, 2002

Arizona Corporation Commission

DOCKETED

SEP 27 2002

Colleen Ryan, Supervisor
 Document Control
 Arizona Corporation Commission
 1200 W. Washington
 Phoenix, AZ 85007

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AZ CORP COMMISSION
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2002 SEP 27 A 10:51

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Re: Docket No. E-01345A-02-0707
 In the matter of Application of Arizona Public Service Company

Dear Ms. Ryan:

Enclosed for filing in the above-captioned proceeding are the original and thirteen (13) copies of Sempra Energy Resources' Application for Leave to Intervene. Also enclosed are two additional copies to be conformed and returned to our office.

Please let me know if you have any questions, and thank you for your assistance.

Sincerely,

Lawrence V. Robertson, Jr.

LVR:cl
 enclosures

INTERVENTION

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN

JIM IRVIN
COMMISSIONER

MARC SPITZER
COMMISSIONER

Arizona Corporation Commission
DOCKETED

SEP 27 2002

DOCKETED BY

CR

IN THE MATTER OF THE)
APPLICATION OF ARIZONA PUBLIC)
SERVICE COMPANY FOR AN ORDER)
OR ORDERS AUTHORIZING IT TO)
ISSUE, INCUR, OR ASSUME)
EVIDENCES OF LONG-TERM)
INDEBTEDNESS; TO ACQUIRE A)
FINANCIAL INTEREST OR INTERESTS)
IN AN AFFILIATE OR AFFILIATES; TO)
LEND MONEY TO AN AFFILIATES OR)
AFFILIATES; AND TO GUARANTEE)
THE OBLIGATIONS OF AN AFFILIATE)
OR AFFILIATES)

Docket No. E-01345A-02-0707

**APPLICATION FOR
LEAVE TO INTERVENE**

ARIZONA CORPORATION COMMISSION
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Pursuant to A.A.C. R14-3-105 and the Chief Administrative Law Judge's September 24, 2002 oral procedural directive, Sempra Energy Resources ("Sempra"), by and through its undersigned attorney, hereby submits this Application for Leave to Intervene ("Application") in the above-captioned proceeding. In support of the Application, Sempra represents the following:

I.

IDENTITY OF APPLICANT

Sempra is a corporation organized under the laws of the State of California, and is qualified to do business in the State of Arizona. Sempra is engaged in the development and operation of

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1 electric generation facilities, and the sale of electricity at wholesale in the competitive market in
2 several western states. In Arizona, Sempra has been authorized by the Arizona Power Plant and
3 Transmission Line Siting Committee and the Commission to site and construct a 1250 megawatt
4 (nominal) electric generation facility for such purpose. That facility is known as the Mesquite Power
5 Station, and it is currently under construction near the community of Arlington in Maricopa County,
6 Arizona. It is anticipated that the Mesquite facility will commence commercial operation in the
7 second quarter of 2003. Capacity and energy from that facility will be sold into the competitive
8 wholesale electric market.
9

10
11 Sempra has been an active participant during the past year in proceedings before the
12 Commission relating to the Commission's ongoing efforts to restructure the electric utility industry
13 in Arizona, and facilitate the development of a competitive wholesale electric market. These
14 proceedings have included both the Track "A" and Track "B" phases of the Commission's Generic
15 Proceedings Concerning Electric Restructuring Issues (Docket No. E-00000A-02-0051), Arizona
16 Public Service Company's Request for Variance (Docket No. E-01345A-01-0822) and Tucson
17 Electric Power Company's Application for Variance (Docket No. E-01933A-02-0069). Sempra's
18 interest has been, and continues to be, in any Commission proceedings and decisions which may
19 have an effect upon the development of a competitive wholesale electric market in Arizona, and the
20 ability of unaffiliated competitors such as Sempra to effectively compete therein.¹
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24 ¹ As used herein, the term "unaffiliated" refers to wholesale electric generation entities who do not
25 have a corporate or financial affiliation with an Arizona Utility Distribution Company that will be
26 procuring electric power and energy from the competitive wholesale electric market pursuant to the
27
28

II.

NATURE OF APPLICANT'S INTEREST

The above-captioned proceeding is of such a nature. Pinnacle West Energy Corporation ("PWEC") was specifically formed for the purpose of competing as a wholesale electric generator in the competitive wholesale electric market being developed in Arizona and other western states. Pinnacle West Capital Corporation ("Pinnacle West") is the parent company of both PWEC and Arizona Public Service Company ("APS"). Thus, PWEC and APS are affiliated with one another, and PWEC is an affiliated competitor in the same competitive wholesale electric market in which Sempra will compete.

By means of its September 16, 2002 Application, APS is requesting several financing approvals and authorizations from the Commission. These include the following:

"(a) authorizing APS to assume, issue, or incur up to \$500,000,000 in aggregate principal amount of Recapitalization Debt (as discussed and defined herein) in connection with the refinancing or recapitalization of costs incurred by Pinnacle West Capital corporation ("Pinnacle West") and Pinnacle West Energy Corporation ("PWEC") in the financing of PWEC's construction of West Phoenix CC Units 4 and 5, Redhawk Units 1 and 2, and Saguaro CT Unit 3 (collectively referred to as the "PWEC Assets");

* * *

"(c) authorizing APS to guarantee the obligations (including principal, interest, and associated fees, charges and expenses) of PWEC and /or PWCC ("APS Guarantees") up to an aggregate principal amount of \$500,000,000 (less any Recapitalization Debt) for a period not to exceed a weighted

Track "B" process.

1 average life of 10 years; . . .”

2 [APS Application at page 1, lines 16-19.5 and lines 22-24,
3 respectively]

4 APS’ reasons for seeking approval and authorization to extend its financial resources and
5 credit to PWEC and Pinnacle West are stated elsewhere in its September 16, 2002 Application.

6 They include the following:

7
8 “With no divestiture, or no prospect of a long-term purchase power
9 agreement. . . PWEC is simply not creditworthy under present market
10 conditions absent credit support from APS.” [APS Application at
11 page 4, lines 18-21] [emphasis added]²

12 “Without permanent financing in place and with no potential to
13 obtain financing on commercially reasonable terms, if at all, PWEC
14 cannot effectively compete in the competitive wholesale market under
15 the present credit constraints in that market.” [APS Application at
16 page 14, lines 1-3] [emphasis added]

17 “Exhibit F indicates that APS can accommodate the increased debt
18 authorization sought by the Application without a loss of the
19 Company’s overall credit quality or debt rating. Such debt would
20 have an immaterial effect on the Company’s cost of capital.” [APS
21 Application at page 14, lines 20-23] [emphasis added]

22 In effect, what APS is proposing is to use its financial resources and credit to prop up its
23 wholesale electric generation affiliate, in order that that affiliate may more effectively compete in
24 that competitive wholesale electric market which will seek to serve APS’ “contestable load” pursuant

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² It should be noted that those same “present market conditions” confront unaffiliated wholesale competitors as well, including those who will endeavor to actively participate and compete in the competitive procurement process being developed in Track “B” of the generic electric restructuring proceeding.

1 to the procurement process which is being developed in Track "B". In this regard, APS blandly
2 states:

3 "APS also wishes to make clear that this Application does not affect
4 nor is it intended to affect the Commission's consideration of, or the
5 Company's position on, any of the "Track B" issues identified in
6 Commission Docket No. E-00000A-02-0051. This too was an
7 express part of the Commission's order in Decision No. 65154. (Id.
at pp. 33-34, Tenth Ordering Paragraph.)"³

8 However, despite such "reassurance," the reality is that the approvals and authorizations APS seeks
9 through its Application would affect (i) the competitive procurement process resulting from Track
10 "B" and (ii) those unaffiliated competitors participating therein. In this instance, use of APS'
11 financial resources and credit in the manner proposed would clearly and inevitably "tilt" the
12 competitive playing field in favor of its affiliate (PWEC) from that level that would exist if, as APS
13 alleges, that affiliate's credit rating were downgraded. That advantage could skew competitive
14 market forces that would otherwise operate. Also, with APS being in the position of a creditor of
15 PWEC, it should be noted that there would be a risk that APS would be biased in favor of PWEC in
16 the competitive solicitation, given PWEC's need for revenues to service the loan(s) or loan
17 guarantee(s) from APS.
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20 As a consequence, Sempra will be "directly and substantially affected by the proceedings"
21 herein in question in the manner contemplated by A.A.C. R14-3-105(A). Moreover, Sempra's
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23 ³ It should be noted that the Tenth Ordering Paragraph refers to an application to acquire PWEC's
24 generating assets which APS has acknowledged it has not made to date, and did not make within the
25 time period specified in Decision No. 65154.
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1 intervention and participation would not unduly broaden the issues which have been presented by the
2 September 16, 2002 Application. How Pinnacle West and PWEC came to be in the circumstances of
3 which they and APS now complain, and whether or not those circumstances are the result of a
4 Commission "reversal of course" or other factors, is one category of issues. Another category of
5 issues pertains to what would be the results and effects of Commission approval of APS' requests
6 and prayer for relief on the results of the Track "B" process and the Commission's efforts to develop
7 a competitive wholesale electric market. When viewed in that latter context, it is patently evident
8 that Sempra and other merchant plant generators will be "directly and substantially affected by the
9 proceedings" to be conducted in the instant docket.
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12 WHEREFORE, Sempra requests that the Chief Administrative Law Judge or Commission
13 enter an order granting this Application for Leave to Intervene, thereby according to Sempra all
14 rights of participation in the above-captioned proceeding as a party of record.
15

16 Dated this 26TH day of September, 2002.

17 Respectfully submitted,
18

19
20 By: Lawrence V. Robertson, Jr.
21 Lawrence V. Robertson, Jr.
22 Munger Chadwick, P.L.C.

23 and

24 Theodore E. Roberts
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28 Attorneys for Sempra Energy Resources

1 The original and ten (13)
2 copies of the above Application
3 for Leave to Intervene was filed
4 on September 27, 2002 with
Docket Control.

5 Copies were hand-delivered, e-mailed,
6 or mailed to the following individuals:

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